

Ernie Perez
SID No. 15803778
Eastern Oregon Correctional Institution
2500 Westgate
Pendleton, OR 97801
Pro Se Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ERNIE PEREZ,

Plaintiff,

Case No.: 6:22-cv-01868-AN

v.

PLAINTIFF'S NOTICE OF SETTLEMENT

WARREN ROBERTS, ODOC Medical
Director; LISA KOLTES, SRCI Physician;
ASHLEY CLEMENTS, SRCI Nurse
Practitioner; GARTH GULICK, SRCI Physician,
Defendants.

CERTIFICATE OF CONFERRAL

Pursuant to LR 7-1(a)(1)(C), I certify that I am a *pro se* plaintiff currently in the custody of the Oregon Department of Corrections. However, Defendants and I are in agreement regarding this notice, as will be explained more fully below.

MOTION

Plaintiff respectfully notifies this Court, pursuant to LR 41-1, that Plaintiff and Defendants have reached agreement on terms and conditions to settle the above-captioned matter. The Settlement Agreement and Release of Claims is attached as Exhibit 1.

Plaintiff respectfully requests that this Court "direct the clerk to dismiss the case with prejudice" pursuant to LR 41-1(c). Pursuant to LR 77-4, the Court Clerk is "authorized to sign and enter . . . orders of dismissal pursuant to . . . LR 41-1[.]"

LEGAL ARGUMENT

On November 27, 2024, Defendants' counsel submitted a notice of settlement because Plaintiff is unrepresented. This case is still active. But there has been no activity in terms of litigation of this matter by Defendants nor Plaintiff since the notice of settlement to this Court.

The District Court Clerk may “act on any other matter that does not require the court’s action.” Fed. R. Civ. P. 77(c)(2)(D). Further, pursuant to LR 77-4, the Court Clerk is “authorized to sign and enter . . . orders of dismissal pursuant to . . . LR 41-1[.]”

CONCLUSION

The parties have reached agreement to terminate this action. This case should be closed. Plaintiff respectfully requests that this Court and/or the Court Clerk enter dismissal pursuant to LR 41-1.

Respectfully submitted; dated March 13, 2025.


Ernie Perez, *Pro Se* Plaintiff

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This action is currently pending in U.S. District Court, Case No. 6:22-cv-01868-AN ("Action"). The Plaintiff in this Action is Ernie Perez, *pro se*. The Defendants in this Action are Warren Roberts, Lisa Koltes, Ashley Clements, Garth Gulick, and Thomas Bristol, represented by Allie M. Boyd. This Action is a civil rights action initiated against Defendants pursuant to 42 U.S.C. § 1983. The Action does not include any claims of professional negligence against any of the Defendants. Plaintiff and Defendants (the "Parties") have agreed to settle this Action for the consideration set forth in this Settlement Agreement and Release of Claims ("Agreement"). The effective date of this Agreement is the date on which it is fully executed.

The terms of this Agreement are as follows:

Settlement Payment: As consideration for Plaintiff's Release of Claims, and on behalf of the Released Parties described below, the State of Oregon, by and through the Oregon Department of Administrative Services/Risk Management ("Risk Management"), shall pay plaintiff the sum of Seventeen Thousand and Five-Hundred Dollars (\$17,500.00) ("settlement payment"), payable to "Ernie Perez, SID# 15803778" and to be deposited into plaintiff's AIC Trust Account within 30 calendar days after counsel for defendants receives an executed copy of this Agreement from plaintiff.

Cost of Care Exemption: All payments received by Plaintiff pursuant to this Agreement are exempt from ODOC or any other state agency's "cost of care" rule.

Other Terms of Settlement: As consideration for Plaintiff's Release of Claims, and on behalf of the Released Parties described below, the State of Oregon Department of Corrections shall do the following:

1. Plaintiff will have a repeat NCV/EMG with a neurologist;
2. Plaintiff will have a repeat MRI of his thoracic and cervical spine;
3. Plaintiff will have a consultation with a neurologist;

4. Plaintiff's provider will have a peer-to-peer consultation with a pain management specialist;
5. ODOC will assume responsibility for the cost of plaintiff's initial appointment with Providence Neuroscience that took place in May 2024; and
6. Following the initial appointment referenced in point #7 above, ODOC will provide medically necessary care as indicated.

Release of Claims: In consideration for the above settlement payment, plaintiff, individually and on behalf of any heirs, executors, administrators, successors, agents, and assigns agrees to release, acquit, and forever discharge defendants and all those in interest with them including the State of Oregon and all of its political subdivisions, agencies, departments, administrators, officers, current and former employees, agents, attorneys, and insurers (collectively "Released Parties"), from any and all claims, demands, or causes of action, whether known or unknown, under any legal, equitable, or other theory, that exist or may exist against the Released Parties through the Effective Date of this Agreement.

The release, acquittal, and discharge described above ("Release") includes any claims against the Released Parties - including the Oregon Department of Justice and Risk Management - arising from the negotiation or execution of this Agreement. This Release also includes any damages (including past and future medical and mental health expenses, lost wages, impairment of earnings, emotional distress, pain and suffering, punitive damages, and any other compensatory, economic, noneconomic, nominal, or other forms of damage) and equitable relief (including injunctions or declaratory judgments), whether known or unknown, or which may develop after the effective date of this Agreement, and including any and all expenses (attorney fees, costs, and disbursements).

Newly-Discovered Evidence: The Parties agree that if, after the Effective Date of this Agreement, they discover evidence different from or in addition to the evidence which they now know of or possess, this Agreement remains in full force and effect.

Each Party is Responsible for Own Attorney Fees and Costs: The Parties

acknowledge and agree that they are solely responsible for paying any attorney fees and costs they incurred and that neither the Parties nor their attorneys will seek any award of attorney fees or costs from the other Party.

Plaintiff is Responsible for all Subrogation and Liens: Plaintiff acknowledges that all

subrogation and lien claims arising out of contract or under state or federal law-including, but not limited to, subrogation or lien claims of or related to health care providers, insurance carriers (including personal injury protection or "PIP"), workers' compensation carriers, attorneys, and any federal or state agency or programs such as Medicare, Medicaid, or Social Security-are the sole and separate obligation of plaintiff which plaintiff agrees to pay or otherwise resolve. Plaintiff will defend, indemnify and hold harmless the Released Parties from and against all such lien and subrogation claims brought against the Released Parties.

Medicare Disclaimer and Waiver: By signing below, plaintiff declares under penalty

of perjury that: (1) plaintiff is not currently entitled to Medicare; and (2) none of the treatment received for the injury or injuries claimed in this Action (or related to the incident giving rise to this Action) or released in this Agreement were submitted to or paid for by Medicare. Plaintiff waives, releases, and forever discharges Released Parties from any obligations for any claim or future claim, known or unknown, arising out of the failure of Released Parties to provide for a primary payment or appropriate reimbursement to Medicare pursuant to 42 U.S.C. § 1395y(b)(3)(A), and plaintiff shall defend, indemnify and hold harmless the Released Parties for any claims arising out of arising out of 42 U.S.C. § 1395y(b). Plaintiff further understands this settlement may impact, limit or preclude plaintiff's right or ability to receive future Medicare benefits arising out of the injuries alleged in this lawsuit.

No Tax Representations: No party warrants or represents how the United States

Internal Revenue Service ("IRS"), the Oregon Department of Revenue, or other governmental authority will treat the settlement payment for tax purposes, and agree that no further payment of

money from Released Parties will be due in the event that the payments or the release of the claims embodied in this Agreement or any portion thereof is found by the IRS, the Oregon Department of Revenue, or other governmental authority to be, or result in, taxable income to any party. **The Released Parties, as part of their reporting requirements, may have to communicate with the IRS, including submitting IRS form 1099. The Released Parties reserve the right to respond to inquiries by said authorities and to make any additional disclosures requested by the governmental authority or as required by law. Plaintiffs are solely responsible for the tax consequences of settlement payment, and plaintiffs agree not to hold the Released Parties responsible for taxes due.**

Entire Agreement: This Agreement contains and constitutes the entire agreement and understanding of the Parties, notwithstanding any and all prior negotiations, discussions, undertakings or agreements made in arriving at this Agreement. There are no representations, agreements, or inducements between the Parties except as set forth expressly and specifically in this Agreement.

No Admission of Fault or Future Precedent: The Parties agree that this Agreement is not to be construed as an admission or proof of any liability or fault whatsoever on the part of the Released Parties. This Agreement does not establish a precedent in the settlement of any current or future grievance, claim of unfair labor practice, or other dispute among the Parties, and shall not be admissible as evidence in any future arbitration, administrative or court proceeding except in a proceeding brought to enforce the terms of this Agreement. In the event plaintiff pursues a claim waived or released pursuant to this Agreement, the Released Parties may plead this Agreement as an absolute defense.

No Waiver: The failure by any of the Parties to enforce at any time, or for any period of time, any one or more of the terms or conditions of this Agreement or a course of dealing between the Parties, shall not be a waiver of such terms or conditions or of such Party's right to enforce each and every term and condition of this Agreement.

Invalidity: This Agreement does not waive any right that may not legally be waived. If any provision contained in this Agreement shall for any reason be held to be invalid, illegal, void, or unenforceable in any respect, such provision shall be deemed modified so as to constitute a provision conforming as nearly as possible to such invalid, illegal, void, or unenforceable provision while still remaining valid and enforceable, and the remaining terms or provisions of this Agreement shall not be affected.

Binding Agreement and Ownership of Claims: This Agreement shall be binding upon the Parties, and their heirs, representatives, executors, administrators, successors in interest, insurers and assigns. The Parties acknowledge that they have not transferred or assigned, or purported to transfer or assign, to any person or entity, any claim, or any portion of interest of any claim, that was or could have been raised in this Action.

Acknowledgment of the Terms of the Agreement: By the signatures below, the Parties acknowledge that they have read and know the contents of this Agreement, that they fully understand the Agreement's terms, and that they enter the Agreement voluntarily for the purpose of making a full compromise and settlement. Each of the Parties further represents it has consulted or has had the opportunity to consult with legal counsel of its choice concerning the legal effect of this Agreement before signing it, and that each party executes this Agreement voluntarily. Further, the persons executing and delivering the Agreement represent and warrant that they are fully authorized to do so, and that the execution of delivery of the Agreement is lawful and voluntary.


Judgment of Dismissal with Prejudice: The Parties agree to a dismissal of the pending Action with prejudice, without costs or fees to either party. Counsel for Defendants shall file a Stipulated General Judgment of Dismissal with Prejudice, which the Parties or their counsel will sign. Additionally, counsel for the Defendants shall file a Notice of Settlement with a copy of this Agreement attached pursuant to ORS 17.095. The Parties agree to execute these documents

and any further documents and take any further actions, as may be reasonable and necessary, in order to carry out the purpose and intent of this Agreement.

Waiver of Rule of Construction Against Drafter: This Agreement was jointly drafted and approved by all Parties to this Agreement. Any rule that would otherwise require any ambiguities in this Agreement to be interpreted against the drafter(s) is hereby expressly waived.

Counterparts: This Agreement may be executed in counterparts, including counterparts received by facsimile or electronic transmission, with each counterpart constituting an original. The executing Parties agree that a photocopy or other signed copy of this Agreement is as effective as the original.

IT IS SO AGREED TO BY THE PARTIES:



ERNIE PEREZ
Plaintiff

DATED this 25th day of June, 2024



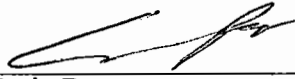
WARREN ROBERTS
Defendant, Oregon Department of Corrections

DATED this 26 day of November 2024

CERTIFICATE OF SERVICE

I certify that on March 13, 2025, I served Plaintiff's Notice of Settlement with attached Exhibit 1 on Defendants' counsel by enclosing a true copy of the document in a prepaid envelope addressed to:

Oregon Department of Justice
ATTN: Allie M. Boyd, Assistant Attorney General
1162 Court Street NE
Salem, OR 97301



Ernie Perez
SID No. 15803778
Eastern Oregon Correctional Institution
2500 Westgate
Pendleton, Oregon 97801
Pro Se Plaintiff

Oregon Department of Corrections - AIC Mail

Institution EOCI SID 15803778

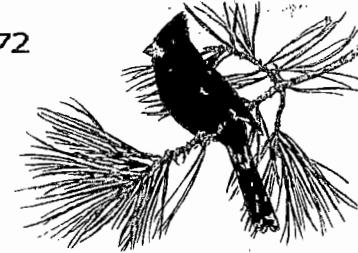
Name Ernie Perez

Address 2500 Westgate

City Pendleton State OR Zip 97801

PORTLAND OR RPDC 972

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Office of the Clerk

Mark A. Hatfield U.S. Courthouse
1000 SW Third Avenue

Portland, OR 97204-2902

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